

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

SHARON PARKS,

Plaintiff,

VS.

**T.J. WIES CONTRACTING, INC. and  
TODD H. SHEPARD**

## Defendants

CIVIL ACTION FILE NO.

(Removed from the State  
Court of Clayton County, Civil  
Action File No. 2020CV01462)

**DEFENDANTS T.J. WIES CONTRACTING, INC.  
AND TODD SHEPHERD'S JOINT NOTICE OF REMOVAL  
TO THE UNITED STATES DISTRICT COURT**

COME NOW defendants T.J. WIES CONTRACTING, INC. (“TJ Wies”) and TODD H. SHEPHERD, incorrect identified as TODD H. SHEPARD, (hereinafter “defendants”), and hereby jointly give notice pursuant to 28 U.S.C. §§ 1441 and 1446 of the removal of this action from the State Court of Clayton County, Georgia, civil action number 2020CV01462, to the United States District Court for the Northern District of Georgia, Atlanta Division. In support thereof, defendants respectfully show to this honorable Court the following facts:

1.

The above-styled action was commenced in the State Court of Clayton County, Georgia, on August 4, 2020, as Civil Action File No. 2020CV01462.

2.

On August 31, 2020, Plaintiff filed an ‘Sheriff’s Affidavit of Service’ as to Defendant Shepherd. That affidavit avers that “JACK (Father)” was served with a copy of the summons and complaint on August 20, 2020 at “1260 S NEW FLORISSANT, MO 63031.”

3.

Defendant Shepard avers that he currently resides at 2109 North 4<sup>th</sup> Street, Fayetteville, Illinois 62258 and has resided at that address for approximately two years or more. Further, he avers that he was not living with his parents at 1260 S NEW FLORISSANT, MO 63031 in August 2020. Affidavit of Todd Shepard, a true and correct copy is attached hereto as Exhibit 1.

4.

Based on Plaintiff’s failure to personally serve defendant Shepherd at his dwelling house or usual place of abode, Plaintiff’s purported service on defendant Shepherd was defective. O.C.G.A. § 9-11-4(e)(7).

5.

On August 31, 2020, Plaintiff filed an ‘Affidavit of Foreign Service’ as to Defendant TJ Wies. That affidavit avers that “Sandy Ellis Payroll Clerk of TJ Wies Contracting Inc” was served with a copy of the summons and complaint on August 17, 2020 at “200 TCW Ct., Lake St. Louis, MO 63367.”

6.

The ‘Affidavit of Foreign Service’ includes the following notation, “SUMMONS & COMPLAINT – SERVE TIMOTHY J WIES OR THE SECRETARY, BARBARA A WIES.”

7.

Pursuant to the Georgia Secretary of State, defendant TJ Wies is a foreign corporation previously authorized to transact business in the state of Georgia.<sup>1</sup> The principal office address is listed as “200 TCW Court, Lake St. Louis, MO 63367.” Its registered agent is CT Corporation System located at 289 S Culver Street, Lawrenceville, GA 30046.

8.

Pursuant to the Missouri Secretary of State’s records, TJ Wies’s principal

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<sup>1</sup> Defendant TJ Wies filed a Certificate of Withdrawal with the Georgia Secretary of State’s office on February 12, 2020. The Secretary of State currently shows the defendants’ business status as “Withdrawn.”

office address is “200 TCW Ct., Lake St. Louis, MO 63367” and Timothy J Wies is its Director and President, with Barbara Wies acting as the Secretary. Its registered agent, Joseph C. Blanner, is located at 825 Maryville Centre Drive, Suite 300, Town and Country, Missouri, 63017.

9.

Based on the plaintiff’s failure to serve Defendant TJ Wies’s president, other officer, managing agent, domestic registered agent, or foreign registered agent, Plaintiff’s purported service of a summons and complaint as to TJ Wies was defective. O.C.G.A. § 9-11-4(e)(1).

10.

Based on the defective service for both defendants, this notice of removal of the case to this United States District Court has been filed by defendants within thirty (30) days of receipt of the complaint, from which it was first ascertained that the case was one which has become removable, in accordance with the provisions of 28 U.S.C. §§ 1441 and 1446.<sup>2</sup>

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<sup>2</sup> *Murphy Brothers v. Michetti Pipe Stringing, Inc.*, 526 U.S. 344, 347-48 (1999) (holding "a named defendant's time to remove is triggered by simultaneous service of the summons and complaint, or receipt of the complaint 'through service or otherwise,' after and apart from service, but not by mere receipt of the complaint unattended by formal process"); see also *Ware v. FleetBoston Fin. Corp.*, 180 Fed. Appx. 59, 62-63 (11th Cir 2006) (holding 28 U.S.C. § 1446(b)’s thirty-day window to file a notice of removal did not begin when plaintiff’s purported service failed to

11.

The parties to this action are plaintiff Sharon Parks, a citizen of the State of Georgia; defendant TJ Wies, a corporation organized and existing under the laws of the State of Missouri, maintaining its principal office and principal place of business in Lake St. Louis, Missouri; and defendant Shepherd, an individual and citizen of the State of Illinois. All of the defendants are diverse from the plaintiff. All defendants consent to and join in this removal.

12.

To the extent there is any question as to the effectiveness of service on Defendant TJ Wies through “Sandy Ellis Payroll Clerk,” Defendant TJ Wies expressly consents to defendant Shepherd’s removal of the present action.

13.

In this action, plaintiff seeks to recover general and special damages, for personal injuries allegedly sustained in an automobile collision occurring on or about December 5, 2018. Prior to filing suit in state court on June 9, 2020, the plaintiff made a specific demand on the defendants in an amount in excess of the required jurisdictional amount of \$75,000.00.

14.

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strictly comply with Georgia’s foreign corporation service requirement).

Therefore, this action is one over which this Court has diversity jurisdiction pursuant to 28 U.S.C. § 1332, in that (a) plaintiff and defendants are citizens of different states, and (b) the matter in controversy has a value, exclusive of interest and costs, in excess of \$75,000.00.

15.

Venue is proper in this Court as to defendants pursuant to 28 U.S.C. § 1391(b)(2) and Local Rule 3.1(B)(3), N.D.Ga., on the grounds that a substantial part of the events and omissions giving rise to the claim occurred in this District.

16.

Attached hereto and made a part hereof by reference are true and correct copies of the following documents filed in the State Court of Clayton County, Georgia:

Exhibit A – General Civil Case Initiation Form;

Exhibit B – Summons to T.J. WIES CONTRACTING, INC.;

Exhibit C – Summons to Todd Shepard;

Exhibit D – Plaintiff's First Interrogatories and Requests for Documents to Defendant TJ WIES;

Exhibit E – Plaintiff's First Interrogatories and Requests for Documents to Defendant Shepard;

Exhibit F – Complaint;

Exhibit G – Sheriff’s Entry of Service upon Shepard;

Exhibit H – Affidavit of Foreign Service upon TJ Wies;

Exhibit I – Entry of Appearance;

Exhibit J – Stipulation Extending Time to Answer Complaint; and

Exhibit K – Defendants T.J. Wies Contracting, Inc. and Todd Shepherd’s Joint Notice to the State Court of Clayton County, Georgia of Removal of Action to the United States District Court.

WHEREFORE, Defendants T.J. WIES CONTRACTING, INC. and TODD H. SHEPHERD pray that the State Court of Clayton County, Georgia, proceed no further with Civil Action File No. 12EV015917E, and that said action be and hereby is removed from the State Court of Clayton County, Georgia, to the United States District Court for the Northern District of Georgia, Atlanta Division.

This 2<sup>nd</sup> day of November, 2020.

s/Andrew M. Capobianco  
Andrew M. Capobianco  
Georgia Bar No. 012592  
Richard Bruno  
Georgia Bar No. 257698  
Attorney for defendants  
*T.J. Wies Contracting, Inc. and  
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**CERTIFICATE OF SERVICE AND TYPE SIZE COMPLIANCE**

I hereby certify that on this date I electronically filed the foregoing *Defendants T.J. Wies Contracting, Inc. and Todd Shepherd's Joint Notice of Removal to the United States District Court* with the Clerk of Court using the CM/ECF system, which will automatically send an e-mail notification of such filing to the following attorneys of record:

Christopher M. Farmer, Esq.  
Davis, Zipperman, Kirschenbaum & Lotito, LLP  
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Attorney for plaintiff

Pursuant to Local Rule 5.1, NDGa., the foregoing pleading is prepared in Times New Roman, 14 point.

This 2<sup>nd</sup> day of November, 2020.

s/ Andrew M. Capobianco